Supreme Court, U.S.
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No. 92-1699

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

JOHN C. JUSTICE and STEVEN T. LYNCH,
Petitioners,

v.

LIEUTENANT JERRY SUITS, Corrections Officer, Illinois Department of Corrections, JUDSON CHILDS, Assistant Warden, Shawnee Correctional Center, PFC. D.R. FRIEDMAN, Officer, Illinois State Police, DAVID G. SANDAHL, Warden, Shawnee Correctional Center, GARY RICH, Internal Affairs Officer, Shawnee Correctional Center, MICHAEL P. LANE, KENNETH L. McGINNIS, Former Directors, Illinois Department of Corrections,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

I. Whether the search of the petitioner Justice's vehicle prior to visitation with an inmate, petitioner Lynch, constituted a violation of the Fourth Amendment's prohibition against unreasonable searches and seizures.

II. Whether restriction on petitioner Justice's visitation of petitioner Lynch constitutes the infliction of cruel and unusual punishment on Lynch in violation of the Eighth Amendment.

LIST OF PARTIES

John C. Justice was a plaintiff below and is a petitioner in this Court.

Steven T. Lynch is an inmate in the custody of the Illinois Department of Corrections. He was a plaintiff below and is a petitioner in this Court.

Lieutenant Jerry Suits and Gary Rich are employees of the Illinois Department of Corrections. They were defendants below and are respondents in this Court.

Pfc. D.R. Friedman, is an officer of the Illinois State Police. He was a defendant below and is a respondent in this Court.

David G. Sandahl is the warden of Shawnee Correctional Center and an official of the Illinois Department of Corrections. He was a defendant below and is a respondent in this Court.

Judson Childs is an assistant warden of Shawnee Correctional Center and an official of the Illinois Department of Corrections. He was a defendant below and is a respondent in this Court.

Michael P. Lane and Kenneth L. McGinnis are former directors of the Illinois Department of Corrections. They were defendants below and respondents in this Court.

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RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Introduction

The petitioner, John C. Justice, is an unincarcerated person. Petitioner Steven T. Lynch is an inmate in the custody of the Illinois Department of Corrections.

In June of 1989, the Shawnee Correctional Center, where Lynch resided, instituted administrative searches of vehicles coming on to the prison in order to check the proliferation of contraband. Justice arrived at Shawnee to attend a picnic given for the benefit of the inmates, their families and friends. All vehicles coming on to the property were searched. Justice consented to the search. (R. Doc. 18, p. 4). On May 13, 1990, Justice returned to Shawnee to visit Lynch. Justice's car was again searched as it came on to the property. (R. Doc. 18, p. 5). On both of those occasions, Justice expressed his disapproval of vehicle searches.

On June 16, 1990, Justice, accompanied by his wife, arrived at Shawnee to attend another picnic. As with the previous picnic, the prison officer requested permission to search visitors' vehicles. Justice attempted to circumvent the vehicle search by parking a quarter of a mile away from the facility. (R. Doc. 18, p. 6). Justice and his wife were denied admittance into the facility on foot. (R. Doc. 18, p. 7). Justice returned to his car and waited in line with other visitors to reach the vehicle checkpoint area. (*Id.* at p. 8).

Once at the checkpoint area, Lieutenant Jerry Suits requested permission of Justice's wife, the driver of the vehicle, to search the car. Justice stated that he "objected" to the search of his vehicle, claiming that such

a search violated his rights under the Fourth Amendment. (R. Doc. 18, p. 8). The officers requested that Justice either submit to the search or leave the grounds. Justice did neither and continued "objecting" until the state police arrived. Before the police arrived, Assistant Warden Childs again asked Justice to submit to a search or leave the grounds. (*Id.* at p. 9). Once State Trooper Friedman arrived, Justice and his wife left Shawnee.

On July 18, 1990, Justice received a letter from the Warden of Shawnee, David G. Sandahl, informing him that he had been placed on the visitor "Permanent Restriction List." (R. Doc. 29, p. 2). The letter stated that the restriction was based upon Justice's refusal to submit to a search of his vehicle on May 13, 1990 and June 16, 1990. The letter also advised Justice that the decision of Warden Sandahl was reviewable after six months. Justice did not request a review of the decision. (Pet., p. 18).[1]

Proceedings Below

On November 19, 1990, the Petitioners, Justice and Lynch, filed a ten-count complaint under 42 U.S.C. § 1983, alleging Shawnee Correctional Center officers and Illinois Department of Corrections officials, and an Illinois State Police officer violated their constitutional rights under the Fourth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution, and their rights under Article I, § 6 of the Constitution of the State of Illinois. (Ill. Const. of 1970, art. I, § 6). (R. Doc. 2). Counts one through seven related the events surrounding Justice's refusal to submit to the administrative search of his vehicle prior to visitation with Lynch.

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[1] Respondents cite to the Petition for Writ of Certiorari as "Pet. ____."

In the complaint, Justice and Lynch alleged that the defendants "lacked jurisdiction to order a private citizen to submit to a search without probable cause." (R. Doc. 2, pp. 6-8). With respect to Lynch, counts eight through ten alleged that Lynch had been subject to "cruel and unusual punishment" when Justice's visitation privileges were terminated upon his refusal to submit to a vehicle search. They prayed:

> 1. that the court declare that Justice's rights under the Fourth Amendment had been violated; and
>
> 2. that the court enjoin the defendants from searching "privately-owned vehicles that enter upon the property of the State of Illinois" unless probable cause can be shown.

(R. Doc. 2, p. 10).

On November 27, 1990, Justice and Lynch petitioned the district court for a temporary restraining order, seeking to enjoin the Department of Corrections from searching visitor vehicles at Shawnee and at all other correctional facilities in the State of Illinois. (R. Doc. 2, p. 2).

The case was referred to U.S. Magistrate Gerald B. Cohn pursuant to 28 U.S.C. § 636(b)(1)(B). Magistrate Cohn recommended to the district court that the petition be denied. (R. Doc. 6). Upon consideration of plaintiffs' objections and the magistrate's recommendation, the district court entered its order denying plaintiffs' petition for injunctive relief. The court found that the plaintiffs failed to meet their burden of showing entitlement to such an extraordinary remedy. (R. Doc. 13, p. 2). The plaintiffs amended their complaint on March 15, 1991.

Most of the allegations of the amended complaint relate to the activities of Justice. Justice and Lynch alleged that the search of Justice's vehicle in June 1989 and on May 13, 1990 were unreasonable searches in violation of the

Fourth Amendment. Only one count of the complaint directly related to Lynch. (R. Doc. 18, p. 20). Lynch alleged that restriction of visitation privileges to Justice constituted an infliction of cruel and unusual punishment upon him in violation of the Eighth Amendment.

The defendants moved to dismiss the amended complaint pursuant to Fed. R. Civ. Pro. 12(b)(6). A hearing on the motion was held before Magistrate Gerald B. Cohn on May 17, 1991. Magistrate Cohn recommended to the district court that the amended complaint be dismissed as to all parties. (R. Doc. 25, p. 11). The plaintiffs filed a timely objection to the magistrate's report. (R. Doc. 28).

On July 19, 1991, the district court entered an order granting defendants' motion. (R. Doc. 29). Accepting all well-pled facts of the amended complaint as true, the district court held that the plaintiffs had not alleged a constitutional violation under Section 1983. The court found that Justice had no constitutional right to visit Lynch. The district court held that, as a visitor to the prison, Justice was obliged to follow the rules which meet legitimate penological objectives. Therefore, the district court concluded, Justice did not have the right to enter an Illinois Department of Corrections facility without submitting to a search of his person and his vehicle.

Moreover, the court found that Justice refused to submit to a search on June 16, 1990, rather than merely object to it, and that his subsequent restriction from visitation was not in retaliation for exercising what he perceived to be his rights under the Fourth Amendment. (R. Doc. 29, pp. 4-5).

With respect to Justice's attempt to enter the prison on foot, the district court declined to "second guess" the corrections officials' decision not to allow visitors to walk

on to the premises during a picnic on the grounds. (R. Doc. 29, p. 4).

The district court also found that denial of visitation did not constitute an Eighth Amendment violation as to Lynch. (*Id.*) Plaintiffs appealed from the district court's order dismissing the amended complaint on August 19, 1991. (R. Doc. 31).

In an unpublished order, the Court of Appeals for the Seventh Circuit affirmed the district court's decision, adopting the reasoning of the district court. The court of appeals added that "because of the wide-ranging deference" accorded prison administrators, the defendants did not have the burden of showing that their policy met legitimate penological objectives. (Appendix, p. 253).

REASONS FOR DENYING THE WRIT

I.

THE COURT OF APPEALS CORRECTLY HELD THAT JUSTICE'S FOURTH AMENDMENT RIGHT WAS NOT VIOLATED WHEN HE WAS REQUIRED TO SUBMIT TO A SEARCH OF HIS VEHICLE UPON ENTERING AN ILLINOIS DEPARTMENT OF CORRECTIONS FACILITY.

Contrary to the petitioners' contention, (Pet. pp. 15-26), the court of appeals correctly held that the defendants' search of Justice's vehicle did not violate the Fourth Amendment. *Kentucky Department of Corrections v. Thompson*, 490 U.S. 454 (1989). Denial of prison access to a particular visitor is " 'well within the terms of confinement ordinarily contemplated by a prison sentence.' " *Id.* at 461, citing *Hewitt v. Helms*, 459 U.S. at 468 (1983). Likewise, the Constitution does not provide a right to a

free individual to visit an inmate, and Illinois law does not confer such a right. *Mayo v. Lane*, 867 F.2d 374, 376 (7th Cir. 1989).

Section 501.220 of the Illinois Administrative Code clearly states that all persons, vehicles and items coming onto State property are subject to a search. Prominent notice of this policy is posted at all correctional facilities. 20 Ill. Adm. Code § 501.220(a)(1) (1992). Thus, all prison visitors are put on notice that they relinquish certain privileges by entering the prison.

This Court has made clear that the control of the proliferation of contraband in prisons and detention centers is a legitimate penological objective, and directly affects the State's need to manage a correctional facility. *Bell v. Wolfish*, 441 U.S. 520, 540 (1979). Consequently, prison officials are accorded "wide-ranging deference" by the courts to meet penological objectives. *Id.* at 547.

In this case, the legitimate penological interests of correctional officials were heightened by the fact that the visit at issue did not take place during a routine day. Rather, the institution had arranged a picnic, which inmates, family members and friends attended. (R. Doc. 18, p. 6). Because of the number of persons, including strangers, coming into the institution, correctional officials searched *all* visitors' vehicles, not just Justice's. (R. Doc. 18, pp. 7-8).

Moreover, Justice's attempt to evade the security safeguards put in place by parking his car outside the institution did not give rise to a Fourth Amendment claim either. Where the institution was crowded with visitors intermingling with inmates, correctional officials needed increased controls over persons with access to the grounds. (See, Pet. p. 9). A car parked outside the prison gates

presents its own security risks. Unlike a vehicle secured in the prison parking lot, a car parked outside prison walls is readily available to be used in escapes.

Based on these facts, the court of appeals correctly followed the established principle that the privilege of visitation of inmates may be conditioned upon the search of the visitor. *Kentucky Department of Corrections v. Thompson*, 490 U.S. at 461. This decision is consistent with decisions from both state and federal courts. *See, e.g., United States v. Ward*, 431 F.Supp. 66 (W.D. Okl. 1976) (the search of a visitor's car while parked in prison parking lot did not constitute an unreasonable search); *Estes v. Rowland*, 14 Cal. App. 4th 508, 17 Cal. Rptr. 2d 901 (1st Dist. 1993) (the use of dogs to search visitors' vehicles as they enter correctional center did not exceed reasonableness contemplated under the Fourth Amendment); *Mathis v. Appellate Department*, 28 Cal. App. 3d 1038, 105 Cal. Rptr. 126 (3d Dist. 1972) (the driver and passengers of a vehicle coming onto prison property are "deemed to have consented to the search of the vehicle"); *People v. Turnbeaugh*, 116 Ill. App. 3d 199, 451 N.E.2d 1016 (5th Dist. 1983) (the governmental interest in keeping contraband out of penal institutions outweighs the "substantial" intrusion of searching visitors' vehicles); *cf. Justice v. Elrod*, 832 F.2d 1048, 1051 (7th Cir. 1987) (upholding reasonableness of administrative searches conducted at the entrance of Cook County, Illinois courthouses where Justice, this same petitioner, advanced Fourth Amendment claim). *See also*, 4 LaFave, Search and Seizure § 10.7(b) (2d ed. 1987).

In contrast, the cases on which Justice relies involve very different circumstances. For example, in *Marriott by and through Marriott v. Smith*, 931 F.2d 517 (8th Cir. 1991), the Fourth Amendment analysis centered upon a

search conducted *after visitation*, not before as here. Nor does this case involve an invasive strip search procedure as in *Blackburn v. Snow*, 771 F.2d 556 (1st Cir. 1985), and *Hunter v. Auger*, 672 F.2d 668 (8th Cir. 1982), or prison employees as in *McDonnell v. Hunter*, 809 F.2d 1302 (8th Cir. 1987). Because the court of appeals correctly applied long-standing principles of law and found that Justice failed to allege facts to show that the search of his vehicle was unreasonable under the Fourth Amendment, there is no basis for granting the writ of certiorari.

II.

PETITIONER LYNCH NEVER ALLEGED FACTS RELATING TO HIS MEDICAL CONDITION AND TREATMENT AS A RESULT OF DENIAL OF VISITATION TO PETITIONER JUSTICE; THEREFORE, THESE ALLEGATIONS CANNOT SUPPORT THE GRANTING OF THE WRIT.

The petitioner Lynch asserts that denial of visitation to Justice has subjected him to cruel and unusual punishment under the Eighth Amendment. (Pet. pp. 26-27). The petitioner presents to this Court a discussion of Lynch's mental decline and the subsequent medical treatment he has received. (Pet. pp. 27-30). The petitioner also presents facts surrounding Justice's application to the warden for visitation and subsequent denial. These facts, however, were not alleged in the original (R. Doc. 2) or amended complaints. (R. Doc. 18). Since these facts were not alleged or considered by the courts below, they are impermissibly before this Court in the petition and should not be considered by the Court.

Based on the facts alleged, the court of appeals, following the clearly established law, found that Lynch's lack of companionship did not constitute cruel and unusual

punishment under the Eighth Amendment. *Jones v. North Carolina Prisoner's Union*, 433 U.S. 119 (1977). Furthermore, courts of appeals have held that even where the lack of companionship continues over an extended period of time, there is no constitutional violation under the Eighth Amendment. *Bellamy v. Bradley*, 729 F.2d 416, 420 (6th Cir. 1984), *cert. denied*, 469 U.S. 845 (1984); *Bono v. Saxbe*, 620 F.2d 609, 614 (7th Cir. 1980); *Newman v. State of Alabama*, 559 F.2d 283, 291 (5th Cir. 1977), *rev'd in part on other grounds, sub nom. Alabama v. Pugh*, 438 U.S. 781 (1978). Thus, contrary to the petitioners' assertion, there is no Eighth Amendment controversy here for the Court to resolve.

CONCLUSION

For all the foregoing reasons, the Court should deny the Petition for Writ of Certiorari to the Seventh Circuit Court of Appeals.

Respectfully submitted,

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